

ISSUES AND ANSWERS SERIES: PROBLEM NO. XIII

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: How Can the Agency Win Congressional Acceptance
of the Director's Intelligence Sources and Methods
Legislation

A. Recommendation: The Agency should use every possible forum to seek the endorsement of individual Members of Congress and relevant committees for this legislation.

Discussion

Because the proposed legislation is of a highly controversial nature, the Agency must seek every opportunity available to win support of prominent Members of Congress for this proposal. Particularly valuable would be the endorsement of Members of Congress who have been critical of the Agency in the past, and who have a strong record for advocating the protection of the constitutional rights of American citizens. Within the next few months at least three major opportunities are present. Both the House and Senate Select Committees will be issuing reports on their findings and their recommendations for changes in the Agency's legislative charter. Given the ideological make-up of these two Committees and the image of some Members of the Committees as staunch critics of the way intelligence has been conducted in the past, endorsement by these groups would greatly increase the chance for passage of the legislation. In addition, the Senate Committee on Government Operations will be holding hearings on congressional oversight of CIA in January. The Government Operations Committee may feel it does not have the jurisdiction to report a criminal statute as part of its bill for altered congressional oversight. However, their recommendation that the appropriate committee report such legislation would significantly aid the chances for passage.

The Director should also request time with the existing Armed Services and Appropriations oversight committees in order to solicit their favorable recommendations for the proposal. Other prominent Members of Congress, such as the leadership of each party, should be approached on an individual basis.

B. Recommendation: The Agency should pull out all stops in presenting arguments on the need for this legislation, and specifically, should consider dramatizing the disclosures of Philip Agee to win support for the proposal.

Discussion

Following are arguments which should be presented to win support for the proposal.

1. Philip Agee - The campaign to win supporters with the intelligence sources and methods proposal has been severely handicapped by the lack of tangible examples of the kinds of problems the Agency faces in this regard, and the impotence of present safeguards. The phrase "intelligence sources and methods" is itself very vague and it is difficult for the Congress, the press, and the general public to grasp what is really at stake. The best example (hopefully) the Agency will ever have is former Agency employee Philip Agee. Agee has not been portrayed in the press as this Agency views him--an ex-employee who has endangered numerous lives by publishing a list of every Agency employee and every cooperating foreigner of whom he was aware. The fact that Agee openly acknowledges the assistance of the Cuban intelligence service and identifies himself as a "revolutionary socialist" (the same phrase Fidel Castro has used in describing himself) should convince the American people of his motives.

The inadequacy of the present espionage law as a deterrent to disclosure could be dramatized by using Agee as an example. We could stress that these laws were written for the "traditional" defector, one who is paid \$50,000 by a foreign intelligence service and communicates his information solely and directly to that intelligence service. The law cannot deal with the "modern" defector, one who chooses to just as effectively devastate this country's intelligence activities by publishing his knowledge in a book, collecting \$250,000 in royalties, and becoming a cause celebre in certain circles. Up to this time, the Agency has been reluctant to openly attack Agee, apparently because

it does not want to give credibility or publicity to his book, and it feels there is some advantage in keeping him guessing regarding the U.S. Government's plans to prosecute him. The decision must be made whether these benefits might not be exceeded by the boost that brandishing his case would give to helping insure that no one else in his position escapes prosecution.

2. Discussions of the postulated Joint Committee on Intelligence inevitably involve the example of the Joint Committee on Atomic Energy (JCAE). Our testimony before committees and individual Members should strongly suggest that one reason for the success of this Committee in maintaining the secrecy of its information is the accompanying stiff criminal statute prohibiting disclosure of Restricted Data. We should make the point that a joint committee on intelligence cannot hope to equal the JCAE's record without a new criminal statute, and we should point out that Congress' image as a responsible body will be sadly tarnished by frequent disclosures from a joint intelligence committee.

3. The protection which the draft bill would mean for the continuing viability of the intelligence effort in support of Government decision-making and thus to the national security.

4. The ways in which the proposed legislation would remedy the inadequacy of current statutory provisions to protect intelligence sources and methods. Stress the Catch-22 dilemma in which the Government now finds itself when it must reveal extremely sensitive material in open court or forego prosecution.

5. The limitations of the proposed statute, e.g. it does not apply to the press, or to congressional testimony, should be stressed. The differences between this proposal and the British Official Secrets Act must also be emphasized.

6. The similarities between the draft legislation and a number of other criminal statutes should be mentioned. There are 17 statutes making it a criminal offense to disclose various kinds of unclassified information in possession of Government agencies, including disclosure of Department of Commerce information, diplomatic Code material, crop information, patent information, and Selective Service records.

7. The economic cost to the United States which could be avoided by enacting this legislation. These costs include those for counteractions to mitigate the damage, and to affect advantages to the opposition. They include costs of replacement personnel, enlistment of new and substitute sources, reliance on costly non-human sources and methods of intelligence gathering, and increased security measures. Moreover, the ultimate costs that would result from inadequate intelligence should be mentioned.

C. Recommendation: The Agency must be prepared to accept fallback positions granting additional defenses to prosecution, or further restricting the class of people to whom the legislation applies.

Discussion

Additional Defense - One stated objection to the bill is that it is intended to, and in fact would, prevent and punish the disclosure of illegal or improper Agency activities. Senator Mondale emphasized this in a June 26 Senate floor speech concerning the recommendations of the Rockefeller Commission. He concurred with many of the recommendations, but he heatedly attacked the Commission's endorsement of the sources and methods legislation. Mondale said,

"The irony of this recommendation is that it would probably in the future prevent the public from knowing about transgressions and violations of the law of the kind we are now investigating here before the Senate Select Committee on Intelligence ... To reveal the spying on Americans, the opening of their mail, the bugging of their phones, or plots to assassinate foreign leaders all could put you in jail ... How much of the information in the [Rockefeller Commission] Report, I wonder, was secret or top secret only a few months ago. Without public disclosure, most of the abuses documented in the report would never have been corrected. Yet this law proposed by the Commission could help insure that public scrutiny would never happen again."

Senator Mondale's point, although overstated, can be expected to figure prominently in debate on the legislation. We must convince Congress, the press, and the public that the legislation cannot be used to cover up illegal or improper activities. Although numerous safeguards are written into the bill, these deal primarily with the question of proper classification, not legality. There is no express avenue in the bill whereby a person covered by the bill can disclose on his own initiative to a responsible outside official information relating to an intelligence source or method which he believes to be illegal. A fallback position which would meet Senator Mondale's point head-on is to amend the bill to provide that an employee who in good faith believes an intelligence activity of the CIA (amounting to an intelligence source or method) is illegal or beyond the charter of the Agency, should exhaust all internal remedies available to him for a review of this matter. If he is not satisfied with the internal determination, the employee may, in a secure manner, report his suspicions to members or designated staff members of the President's Foreign Intelligence Advisory Board

or the committees of Congress exercising legislative oversight. Such a provision would provide the employee additional opportunities to obtain external review of the activity, and yet would not jeopardize the intelligence source or method involved.

Narrowing Affected Classes of People - Some objection has been raised on the grounds that the bill may be used to interfere with proprietary interest of U.S. business and contractor personnel because of its application to contractors, their employees, who become possessed of intelligence sources and methods information during the course of contractor performance with the United States Government. This concern may make it necessary to consider either eliminating the contractor class from the bill or providing lesser penalties for violation.

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THE FUTURE OF INTELLIGENCE

(Presentation by the DCI before the House Select Committee investigating intelligence, Friday, 12 December 1975)

OPEN SESSION

Outline

Introduction
Concerns for the Future
Basic Essentials for Effective Intelligence Activity
Legislative Needs
Jurisdictional Problem Areas
The Balance

BASIC ESSENTIALS FOR EFFECTIVE INTELLIGENCE ACTIVITIES

The basic essentials of an effective national intelligence activity are relatively few in number, but each is important. The ten essential ingredients I would like to stress are these:

- a. A budget of sufficient size to enable employment of adequate numbers of personnel and to make possible acquisition and operational use of the expensive technical systems which experience has demonstrated are essential for the acquisition of needed information.
- b. Statutory authority and other arrangements which will assure the protection of sensitive intelligence sources and methods and will clearly define the authorities and limitations applicable to intelligence activities.
- c. Security classification systems which enable the proper dissemination of intelligence information and at the same time assure that what should be secret remains secret.
- d. Organization and coordination mechanisms which will give confidence to policy levels of the Executive Branch and to the Congress that the intelligence which is provided to them is accurate as to its factual base and as free from bias in its estimative judgments as is humanly possible.
- e. Continuing access to policy levels of the Government by senior intelligence officials to assure that the Intelligence Community is fully aware of the information needs of the Government to which it must be responsive.
- f. Public trust and confidence that intelligence activities are being conducted within the limits imposed by the United States Constitution and by statutes and Executive Branch directives.
- g. Public acceptance of intelligence as a career worthy of the best talents of the country. Anything short of this will not make intelligence an attractive career for the kinds of young men and women who must enter the profession if the intelligence needs of the United States are to be met in the future.

as related h. A research and development program adequate to keep pace with the increasing complexity of the *adv technology* intelligence problems and to assure full exploitation of all possible means of acquiring information and then using it to best advantage once it is acquired.

(NEED TWO MORE)

- I. WHAT SHOULD BE THE POSITION, ROLE AND FUNCTIONS OF THE SENIOR U.S. FOREIGN INTELLIGENCE OFFICER?
- II. HOW SHOULD STRENGTHENED EXECUTIVE BRANCH OVERSIGHT OF FOREIGN INTELLIGENCE ACTIVITIES BE EXERCISED?
- III. BY WHAT MECHANISM COULD CONGRESSIONAL OVERSIGHT OF THE INTELLIGENCE COMMUNITY BEST BE EXERCISED?
- IV. HOW TO INSURE RETENTION OF COVERT ACTION CAPABILITY? WHERE SHOULD THIS CAPABILITY RESIDE?
- V. WHAT IS TO BE MECHANISM FOR PRODUCTION OF NIEs?
- VI. HOW CAN EXECUTIVE & LEGISLATIVE BRANCHES BEST BE ASSURED THAT FOREIGN INTEL ACTIVITIES ARE CONDUCTED WITH DUE RESPECT TO THE CONSTITUTIONAL RIGHTS OF AMERICAN CITIZENS?
- VII. HOW CAN CONGRESSIONAL NEED FOR SUBSTANTIVE FOREIGN INTEL BEST BE ACCOMMODATED?
- VIII. HOW CAN WE TELL THE INTELLIGENCE STORY BETTER?
- IX. WHAT IS AGENCY POSITION ON VARIOUS DRAFT ADMINISTRATION, LEGISLATIVE PROPOSALS? HOW BEST TO MAKE CONTRIBUTIONS?
- X. WHAT SHOULD BE DCI'S PHILOSOPHY ON SECRECY? HOW AND TO WHOM SHOULD IT BE EXPRESSED? HOW SHOULD PRESENT CLASSIFICATION SYSTEM BE OVERHAULED?
- XI. WHAT ORGANIZATIONAL IMPROVEMENTS CAN BE MADE TO IMPROVE THE INTERNAL COMMAND AND CONTROL OF CIA?
- XII. SHOULD GAO HAVE AUDIT AUTHORITY OVER ALL CIA FUNDS? IF SO, HOW SHOULD SUCH AUDITS BE CONTROLLED TO AVOID DISCLOSURE SOURCES AND METHODS?
- XIII. HOW DO WE GET SOURCES AND METHODS PROTECTIVE LEGISLATION PASSED?
- XIV. WHAT IS THE PROPER CIA-FBI RELATIONSHIP? WHAT ARE THE PROPER CIA RELATIONSHIPS WITH OTHER AGENCIES: USSS, DEA, ETC?

PREPARED STATEMENT ON OVERSIGHT
TALKING POINTS

I. Opening Pleasantries

- Importance of oversight
- CIA wants good oversight
- Matter for Congress, but DCI will share his views

II. History of Agency Oversight Traced

- Armed Services gained in 1947
- Appropriations committees' role
- Recent role of International Relations and Foreign Relations Committees
- Section 662 of the Foreign Assistance Act of 1974
- Select Committees on Intelligence
- Intensity of oversight reflective of national and congressional attitudes
- Efforts to alter oversight structure
- Current oversight by our four committees

III. Issues

- Agency full cooperation with oversight committees, now and in the future
- Key issue not Agency/committee relationship but committee/Congress relationship
- Proliferation of operational information throughout Congress

IV. Future Oversight

- Future oversight should be based on two principles
 - Concentration of exclusive oversight responsibility in minimum number of committees necessary for effective oversight;
 - Adoption of procedures controlling access to operational information within Congress

IV. Continued

- These principles are essential because of the number of committees now requesting access to operational information
- Jurisdictional exclusivity and concentration of responsibility will make for better oversight and more secure environment for operational information.
- Rules and procedures in Congress necessary to protect essential secrets
- Access to operational information brings corresponding responsibility to protect it
- Rules should limit access to operational information to membership and staff of designated oversight committees
- Rules should require consultation with Agency before publication of information by the committee

V. Sources and Methods

- Sources and Methods legislation should be enacted as part of strengthening congressional oversight
 - analogy with Joint Committee on Atomic Energy and Restricted Data statute
- While we are relatively open, we need some secrets. Sources and Methods statute necessary to protect these secrets.

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DECEMBER						
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	1 25X1A	2 SSC:Open FBI [REDACTED] HSC:Open SALT	3 SSC-Open FBI/IRS HSC: Open 1000 TET - Colby [REDACTED]	4 SSC-Open Chile 25X1A	5 SSC- Open Chile	6
7	8	9 SSC:Open FBI/WhiteHouse HSC: 10:00 - Legal Issues 2:00-Cover Action	10 HSC:closed CA	11 SSC:Closed Role of DCI HSC: Role of Congress	12 HSC: Future of Intelligence Mr. Colby	13
14	15 SSC:Closed Oversight Colby/Schles inger	16 SSC: Open New Requirements	17 SSC:Open New Requirements	18 SSC: Open Future of Community	19 SSC-Open Future of Community	20
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